

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3825 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

SHANKUBHAI DOSABHAI CHAUHAN

Versus

GAJRABEN D/O BHAVANSANG RATABHAI SINCE DECEASED THRO'HEIRS

Appearance:

MR BB NAIK for Petitioner
RULE SERVED for Respondent No. 1
MR AJ PATEL for Respondent No. 2

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 29/08/2000

ORAL JUDGEMENT

#. Heard Mr.B.B.Naik, learned advocate appearing on behalf of the petitioner and Mr.A.J.Patel, learned advocate appearing on behalf of the respondents. In the present petition, RULE has been issued by this Court on

3rd August, 1987 and interim relief was refused.

#. The brief facts giving rise to the present petition are as under :-

The land in dispute are survey no. 919 and 1100 at village Amrabhaina Muvada, Taluka Dahegam, District Ahmedabad. The petitioner Shankubai claims to be tenant in respect of these land. The land Survey No. 1100 is admeasuring 2 acres and 25 gunthas and land Survey No. 919 is admeasuring 1 acre and 38 gunthas of the same village and both belong to the same landlord deceased Bhavansinh Ratabhai and since his death, he was succeeded by his widow Rajuba in the year 1959. Rajuba died on 8th July, 1976 and hence her daughter Gajaraben daughter of Bhavnsang is opponent No.1 in revision application. The applicant - petitioner Shankubai made an application on 11th February, 1977 to the Mamlatdar and ALT, Dahegam for being declared as tenant. The Mamlatdar commenced inquiry under Section 32-G read with Section 84-C of the Tenancy Act being Inquiry Case No. 3372 / 78 and decided the said case and by his order dated 24th November, 1978 held so far as S.No. 919 is concerned, by a private arrangement, the same was sold by the landlord to the applicant but the price charged was higher and therefore, he imposed a fine under the provisions of Section 84C of the Act and regularised the transaction, thereby holding the applicant to be the tenant purchaser of the said land under the terms of the new tenure. With regard to the suit land, S.No. 1100, which is the subject matter of the proceedings, the Mamlatdar held that the applicant was the tenant on 1st April, 1957 and therefore, he was entitled to purchase the same and accordingly fixed the purchase price. He observed in the course of his order that this land had been mortgaged by the landlord to Amarsinh Madhusinh. In the appeal filed before the Deputy Collector by the opponent before the tribunal the landlady being appeal No. 62/ 1979, the order passed by the Mamlatdar was set aside by the Deputy Collector by his order dated 30th May, 1979 and with regard to both the lands the matter was remanded for fresh hearing. Thereafter, the applicant filed revision application No. 840 / 1979 which was decided by the Tribunal by order dated 1-4-1980. It was held that the order of remand was not correct and the appellate authority should have decided the matter finally. Accordingly, the revision application was allowed and the appeal was remanded to the Deputy Collector for giving his finding afresh. The said appeal accordingly came up for hearing before the Deputy Collector, being Tenancy Appeal No. 130/82, wherein, he held that by order dated 7th August, 1982

that the sale of S.No. 919 to the applicant was complete but with regard to the suit land S.No. 1100, he found that the land was not in possession of the applicant or of the opponent No.1 but was in possession of Amarsing Madhusinh, whose name appeared in the records since number of years and part of the said land was cultivated by another person too and that transaction of mortgage or the transfer in favour of Amarsing Madhusinh was contrary to law and violative of the provisions of Section 64 of the Tenancy Act. It was further held that the proceedings under Section 29 and 31 of the Act had not been followed while dispossessing the tenant and there was no order for handing over possession to the applicant tenant and therefore, the order fixing the purchase price of the suit land could not be passed by the Mamlatdar. The Deputy Collector therefore allowed the appeal partly and set aside the order passed by the Mamlatdar so far as the suit land is concerned. Against the said order of the Deputy Collector, revision application being Tenancy /BA/ No.879 / 89 was filed by tenant Shankubhai and same was decided on 4th August, 1986. The Gujarat Revenue Tribunal has considered the submission of learned advocates and also decided controversy in respect of the suit land Survey No. 1100 admeasuring 2 acre 25 gunthas. The revenue tribunal has observed that so far as the suit land Survey No. 1100 is concerned, the case of the tenant was that he was a tenant on 1st May, 1957 but he was dispossessed in a manner not according to law sometime after 1957-58 and therefore, he is entitled to be declared as a tenant and entitled to purchase the land under the provisions of Section 32G of the Act. It is agreed that the possession is now with opponents Nos. 1 and 2, or perhaps with opponents Nos. 2 & 3. The in respect of Survey No. 1100 for the year 1955-56 shows that the land stood in the name of Bai Rajuba the widow as the occupant and the name of the applicant Shankubhai Dosabhai was mentioned as the tenant. The mode of cultivation was not shown. Thereafter, the Gujarat Revenue Tribunal has considered the Pahani Patrak of the subsequent years for 1956-57 and 1958-59 and upto 1960 and thereafter the tribunal has also considered upto entry 1970-71 which were found ditto. After considering the evidence on record, the Gujarat Revenue Tribunal has come to the conclusion that the order passed by the Deputy Collector therefore cannot be said to be contrary to law which required any interference by the Tribunal in revision under the provision os Section 76 of the Tenancy Act.

#. Mr.Naik, learned advocate for the petitioner has submitted that order passed by the Deputy Collector on

7th September, 1982, wherein the Deputy Collector has confirmed the order in respect to the Survey No. 919 but set aside the order in respect of the land S.No. 1100 and he directed that steps are required to be taken for breach of Section 29, 31 and 64 and under the provisions of Section 84-C of the Tenancy Act. After reading such observations of the Deputy Collector, Mr.Naik, learned advocate has pointed out that steps are required to be taken by whom and in such situation, the petitioner cannot be compelled to initiate proceedings or to take steps under the provisions of the Tenancy Act. The contention which has been raised by Mr.naik was also raised before the Tribunal on behalf of the tenant. The tribunal has considered the very contention in his judgment and the tribunal has observed that at the same time, Shri Shah, learned advocate appeared on behalf of the tenant says that the applicant should not be compelled to approach the authorities for restoration of possession under the provisions of Section 29 of the Act or under Section 32(1B) of the Act. Shri Shah had also argued that the Deputy Collector should not make it incumbent upon the applicant to commence proceedings under Section 84-C of the Act merely because the land has dispossessed the tenant contrary to law without resorting to the provisions of Section 29 and 31 of the Act. After considering the submission of learned advocate, the tribunal has observed that in this case, the Deputy Collector has not directed the applicant tenant to commence the proceedings. The Deputy Collector directed that the proceedings should be started which amounts to direction to the Mamlatdar to do so. The Deputy Collector has also directed the Mamlatdar to take steps under Section 84-C of the Act and further observed that in fact, in a case of this type, the learned Mamlatdar can and should start suo motu proceedings under Section 84-C of the Act and therefore, the tribunal has negated the arguments of the learned advocate Mr.Shah appeared on behalf of the tenant and clarified the situation and on the contrary the direction of the Deputy Collector to the Mamlatdar was to commence the proceedings under Section 84-C of the Act and therefore, the Tribunal has rightly observed that because there was no direction issued by the Deputy Collector in his order dated 7th September, 1982 against the tenant to initiate the proceedings under Section 84-C for breach of Section 29, 31 and 64 relating to the land in question survey No. 1100.

#. Now at this juncture, relevant provisions of Section 84-C is necessary to refer and same is reproduced here.

"84-C Disposal of land, transfer or acquisition of

which is invalid.

(1) where in respect of the transfer of acquisition of any land made on or after the commencement of the Amending Act, 1955, the Mamlatdar suo motu or on the application of any person interest in such land has reason to believe that such transfer or acquisition is or becomes invalid under any of the provisions of this Act; the Mamlatdar shall issue a notice and hold an inquiry as provided for in Section 84-B and decide whether the transfer or acquisition is or is not invalid.

(2) If after holding such inquiry, the Mamlatdar comes to the conclusion that the transfer or acquisition of land is invalid he shall make an order declaring the transfer or acquisition to be invalid.

1 [Unless the parties to such transfer or acquisition give an undertaking in writing that within a period of three months from such date as the Mamlatdar may fix, they shall restore the land along with the rights and interest therein to the position in which it was immediately before the transfer or acquisition, and the land is so restored within that period]

2 [Provided that where the transfer of land was made by the landlord to the tenant of the land and the area of the land so transferred together with the area of other land, if any, cultivated personally by the tenant did not exceed the ceiling area, the Mamlatdar shall not declare such transfer to be invalid --

(i) if the amount received by the landlord as the price of the land is equal to or less than the reasonable price determined under Section 63-A and the transferee pays to the State Government a penalty equal to Rs.1 within such period not exceeding three months the Mamlatdar may fix;

(ii) if the amount received by the landlord as the price of the land is in excess of the reasonable price determined under Section 63-A and the transferor as well as the transferee pays to the State Government each a penalty equal to one tenth of the reasonable price within such

period as may be fixed by the Mamlatdar.

(3) On the declaration made by the Mamlatdar under sub section (2),-

(a) the land shall be deemed to vest in the State Government, free from all encumbrances lawfully subsisting thereon on the date of such vesting, and shall be disposed of in the manner provided in sub section (4); the encumbrances shall be paid out of the occupancy price in the manner provided in Section 32-Q for the payment of encumbrances out of the purchase price of the sale of land; but the right of the holder of such encumbrances to proceed against the person liable, for the enforcement of his right in any other manner, shall not be affected.

(b) the amount which was received by the transferor as the price of the land shall be deemed to have been forfeited to the State Government and it shall be recoverable as an arrear of land revenue; and

(c) the Mamlatdar shall, in accordance with the provisions of Section 63-A determining the reasonable price of the land.

(4) After determining the reasonable price, the Mamlatdar shall grant the land on new and impartible tenure and on payment of occupancy price equal to the reasonable price determined under sub section (3) in the prescribed manner in the following order of priority -

(i) the tenant in actual possession of the land;

(ii) the persons or bodies in the order given in the priority list;

[Provided that where the transfer of land was made by the landlord to the tenant of the land and the area of the land so transferred together with the area of the land, if any, cultivated personally by the tenant did not exceed the ceiling area then -

(i)[if the amount] received by the transferor as the price of the land is equal to or less than the reasonable price,the amount forfeited under

sub section (3) shall be returned to the transferor and the land restored to the transferee on payment of a penalty of rupee one in each case; and

(ii) [if the amount] received by the transferor as the price of the land is in excess of the reasonable price, the Mamlatdar shall grant the land to the transferee on new and impartible tenure and on payment of occupancy price equal to one tenth of the reasonable price and out of the amount forfeited under sub section (3), the transferor shall be paid back an amount equal to nine-tenths of the reasonable price.

(5) The amount of the occupancy price realised under sub section (4) shall subject to the payment as aforesaid of any encumbrances subsisting on the land, be credited to the State Government:

Provided that where the acquisition of any excess land was on account of a gift or bequest, the amount of the occupancy realised under sub-section (4) in respect of such land shall, subject to the payment of any encumbrances subsisting thereon, be paid to the donee or legatee in whose possession the land had passed on account of such acquisition. "

#. Thus, bare perusal of Section 84(C)(1), it clearly provides that where in respect of the transfer or acquisition of any land made on or after the commencement of the Amending Act, 1955, the Mamlatdar suo motu or on the application of any person interest in such land has reason to believe that such transfer or acquisition is or becomes invalid under any of the provisions of this Act; the Mamlatdar shall issue a notice and hold an inquiry as provided for in Section 84-B and decide whether the transfer or acquisition is or is not invalid. Section 84(C)(2) also provides inquiry and ultimately, declaration is required to be made by the Mamlatdar under sub Section (2) of Section 84(C). Thereafter, sub section (4) of Section 84(C) which gives powers to the Mamlatdar that after determining the reasonable price, the Mamlatdar shall grant such or new or impartible tenure and on payment of occupancy price, equal to the reasonable price determined under sub Section 3 in the prescribed manner in the following order on priority:-

(i) the tenant in actual possession of the land;

(ii) the persons or bodies in the order given in the priority list;

#. Therefore, consider these provisions of sub Section (4) of Section 84(C) of the Tenancy Act, it is quite clear that the Mamlatdar is the only authority to initiate the proceedings for violation of Section 29, 31 and 64 and as a result of that, proceedings after necessary inquiry which required to be held under sub section (2) of Section 84(C) of the Tenancy Act, the Mamlatdar has to fix up the price and then under sub Section (4) of Section 84 (C), according to the priority, the Mamlatdar has to pass the order as per priority granting such land on new and impartible tenure and on payment of occupancy price equal to the reasonable price determined under Section (3). In that priority, the tenant in actual of the land is having first priority and therefore, the apprehension which has been raised by the learned advocate Mr.Naik on behalf of the petitioner is not well founded because the clarification which has been made by the Tribunal that such inquiry has to be commenced by the Mamlatdar under Section 84(C) of the Tenancy Act and the tenant has not to commence such proceedings and there was no such direction was issued by the Deputy Collector in his order dated 7th September, 1982. Therefore, according to my opinion, the order passed by the Deputy Collector dated 7th September, 1982 is not much clear but the same has been substantially clarified by the tribunal. Learned Advocate Mr.Naik has not been able to point out any error either of law or facts committed by the Tribunal. Mr.Naik has not made any other submission except as mentioned above and after perusal of the entire order passed by the revisional authority, according to my opinion, the tribunal has not committed any error which found apparently on the fact of the record and, therefore, the order passed by the tribunal is just, legal and valid which does not require any inference of this Court while exercising powers under Article 226 and 227 of the Constitution. Therefore, in view of aforesaid discussions, the present petition is required to be dismissed and the same is dismissed accordingly. Rule is discharged with no order as to cost.

Date : 29-8-2000 [H.K.Rathod, J.]

#kailash#